LAW OFFICES
SANDERS, SCHNABEL, JOSEPH & POWELL, P.C.
SUITE 800
730 FIFTEENTH STREET, N.W.
WASHINGTON, D. C. 20005

(202) 638-2241
CABLE: LUCMER
TELEX: ITT440356

MARYLAND OFFICE
SUITE 600
51 MONROE STREET
ROCKVILLE, MARYLAND 20850

LUCIEN H. MERCIER
1899-1962
N. MEYER BAKER
1909-1976

JOHN A. SANDERS
ROBERT V. SCHNABEL ◆▲
ALLEN T. JOSEPH
ROBERT D. POWELL ●▲
DAN S. BRANDENBURG
SUSAN PATRICIA FRANK
ROBERT M. REINER ▲
RICHARD W. MILLER, JR. ●
F. GREGORY McKENNA
JOHN J. ABBENE

◆ ALSO MEMBER OF MARYLAND STATE BAR
▲ ALSO MEMBER OF VIRGINIA STATE BAR
● ALSO MEMBER OF NEW YORK STATE BAR

MEMORANDUM

SUBJECT: Voluntary Employees' Beneficiary Associations— Tax Exempt Welfare Plans Under Section 501(c)(9) of the Internal Revenue Code

DATE: July 23, 1980

On July 17, 1980, the Internal Revenue Service published proposed regulations governing voluntary employees' beneficiary associations which are tax exempt welfare plans under Section 501(c)(9) of the Internal Revenue Code. Since we have a number of clients who have either adopted organizations of this type or may be considering organizations of this type, we have prepared a summary of those proposed regulations (copy of which is enclosed).

Proposed regulations generally do not have to be followed until they become final. They may also be subject to change.

The Internal Revenue Service will accept comments on the proposed regulations until September 15, 1980. If any of the proposed regulations have an adverse impact on your plans, you may wish to comment on them. Your comments should be mailed to: Commissioner of Internal Revenue, Attention: CC:LR:T:(EE-153-78), Washington, D.C. 20224. Should you desire it, we could make those comments on your behalf.

If we can be of any further assistance to you in this matter or should you have any questions regarding the proposed regulations, please do not hesitate to contact us. Regardless, if these regulations, when they become final, require an amendment of your documents or your administrative practices, we will be in contact with you.

We hope you find this summary helpful.

SANDERS, SCHNABEL, JOSEPH & POWELL, P.C.

John Dan

Enclosure

LAW OFFICES

SANDERS, SCHNABEL, JOSEPH & POWELL, P.C.

SUITE 800

730 FIFTEENTH STREET, N.W.

WASHINGTON, D. C. 20005

(202) 638-2241

CABLE: LUCMER

TELEX: ITT440356

MARYLAND OFFICE

SUITE 600

51 MONROE STREET,

ROCKVILLE, MARYLAND 20850

LUCIEN H. MERCIER
1899-1962
N. MEYER BAKER
1909-1976

JOHN A. SANDERS
ROBERT V. SCHNABEL ••
ALLEN T. JOSEPH
ROBERT D. POWELL ••
DAN S. BRANDENBURG
SUSAN PATRICIA FRANK
ROBERT M. REINER •
RICHARD W. MILLER, JR. •
F. GREGORY McKENNA
JOHN J. ABBENE

• ALSO MEMBER OF MARYLAND STATE BAR
• ALSO MEMBER OF VIRGINIA STATE BAR
• ALSO MEMBER OF NEW YORK STATE BAR

MEMORANDUM

TO: Clients of Sanders, Schnabel, Joseph & Powell, P.C.

FROM: SANDERS, SCHNABEL, JOSEPH & POWELL, P.C.

SUBJECT: Voluntary Employees' Beneficiary Associations — Tax Exempt Welfare Plans Under Section 5.01(c)(9) of the Internal Revenue Code

DATE: July 23, 1980

On Thursday, July 17, 1980, the Internal Revenue Service published proposed regulations for voluntary employees' beneficiary associations exempt from taxation under Section 501(c)(9) of the Internal Revenue Code, a copy of which is enclosed. The previously proposed regulations of January 23, 1969, were never finalized. To the extent that they impose more stringent requirements on existing tax exempt welfare plans than the regulations proposed on January 23, 1969, the new proposed regulations will only apply with respect to taxable years beginning after December 31, 1980. The balance of the new proposed regulations are effective for taxable years beginning after December 31, 1954. In the case of existing tax exempt welfare plans which receive contributions from one or more employers pursuant to one or more collective bargaining agreements in effect on December 31, 1980, the new proposed regulations shall apply to taxable years beginning after the date on which the agreement (or agreements) terminates. An existing tax exempt welfare plan may choose to be subject to all or a portion of one or more of the provisions of these regulations for any taxable year beginning after December 31, 1954.

There are four basic requirements in order to be a "voluntary employees' beneficiary association" listed in the proposed regulations. They are as follows:

(a) The organization is an association of employees;

(b) Membership in the organization is voluntary;

(c) The purpose of the organization is to provide for the payment of life, sick, accident, or other benefits; and

(d) None of the organization's funds may inure to the benefit of any private shareholder or individual other than as contemplated by (c) above.

The membership of a tax exempt welfare plan must consist of individuals who are entitled to participate by reason of their employee status. There are three ways in which eligibility for membership in this type of plan is defined. The first is in reference to a common employer or affiliated group of employers. The second is with reference to employees in certain specified job classifications working for employers at specified locations and who are entitled to benefits pursuant to one or more collective bargaining agreements. The third would be employees of one or more employers engaged in the same line of business in the same geographic area whose employers provide benefits under a plan. The validity of the membership criteria is a question to be determined with regard to all the facts and circumstances surrounding the definition of the group. Up to ten percent of the members may be trustees, administrators, employees of the association, or the proprietor of a business whose employees are members of the plan.

Membership may be restricted by geographic proximity; by objective conditions; or limitations reasonably related to employment such as a reasonable classification of employees, a reasonable minimum period of service, limitations based upon maximum compensation, or a requirement that a member be employed on a full-time basis. Eligibility for benefits or membership may also be restricted by objective conditions relating to the type or amount of benefits offered. However, these restrictions can not be selected or administered in a manner that discriminates in favor of officers, shareholders, or highly compensated employees. The selection or administration of the objective conditions which have the effect of discriminating in favor of officers, shareholders, or highly compensated employees will be determined on the basis of all of the facts and circumstances surrounding the case. If the limitations are based upon one or more collective bargaining agreements they will generally be accepted as being reasonable. Membership may also be extended to dependents of employees, to employees who are on leaves of absence or temporarily working for another employer, or employees who have been terminated by reason of retirement, disability or layoff.

In order to be eligible for tax exempt status, the benefits must be funded through establishment of a trust or a corporation.

In general, membership in an association is considered voluntary if an affirmative act is required on the part of an employee to become a member; however, an employer may impose membership on the employees if the plan is

noncontributory or if membership is required as a result of a collective bargaining agreement.

A major change in the new proposed regulations from the prior proposed regulations is that the employee members of a tax exempt welfare plan must have a voice in the control of the tax exempt welfare plan. Generally, such control will be deemed to be present when the membership either directly or through its representatives elects, appoints, or otherwise designates a person or persons to serve as chief operating officer, administrator or trustee of the organization. The proposed regulations seem to indicate that control by an independent trustee or trustees, even though not selected by employees, will satisfy this requirement; however, there is no explanation in the proposed regulations of the meaning of an independent trustee. This provision, to the best of our knowledge, has never been required before and would require, in our opinion, a change for almost all existing plans.

A tax exempt welfare plan may provide life, sick, accident, or other benefits similar to life, sick, or accident benefits if the benefit is intended to safeguard or improve the health of a member or a member's dependents or if it protects against a contingency that interrupts or impairs a member's earning power. Sick and accident benefits include disability benefits. The benefits provided by the tax exempt welfare plan may be funded through an insurance company or directly by the sponsors of the plan through the trust or corporation. Examples of nonqualifying benefits are: accident or homeowners insurance benefits for damage to property, provision for malpractice insurance, and provision for loans to members except in times of distress. A benefit which is similar to a pension or annuity payable at the time of mandatory or voluntary retirement is another example of a nonqualifying benefit if the benefit provides for deferred compensation that becomes payable by reason of the passage of time rather than as a result of an unanticipated event. This raises the question of the permissibility of disability benefits from a tax exempt welfare plan after retirement.

No part of the net earnings of a tax exempt welfare plan may inure to the benefit of any private shareholder or other individual other than through the payment of permissible benefits. The payment of unreasonable compensation to the trustees or employees of a tax exempt welfare plan or the purchase of insurance or services for amounts in excess of their fair market value from a company in which one or more of the association's trustees, officers or fiduciaries has an interest will be prohibited inurement. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances. Not only would prohibited inurement negatively affect a plan's tax exempt status, it may also be a prohibited transaction for purposes of the excise tax imposed on prohibited transactions and for purposes of civil liability. However, the proposed regulations expressly permit the rebate of excess insurance premiums to the payor of such premiums as a result of favorable experience.

The controlling documents of the plan must provide that upon dissolution of the plan excess amounts will be distributed to the employee members of the plan and will not be returned to the employers. The regulations do not include any requirements regarding the types of annual information returns to be issued with respect to payments nor do they contain any provisions regarding the funding of these organizations. Taxability of the benefits will be subject to all of the other provisions of the Internal Revenue Code regarding taxability of welfare benefits.

The proposed regulations also provide, without stating any details, that a tax exempt welfare plan must maintain records indicating the amount contributed by each member and contributing employer and the amount and type of benefits paid by the organization to or on behalf of each member.

Enclosure

the interest of a tribe [illegible] he/she may suspend a contract and the payment of all compensation due or accruing to the attorneys at that time pending a hearing to be held without unreasonable delay. If a contract providing for payment of fees at an hourly rate or on an annual retainer basis is terminated, the attorney shall receive compensation such as the Secretary may determine equitably due to date of termination. If a contract providing for payment of fees contingent upon recovery is terminated for just cause, death of the attorney, or any other reason, the attorney to whom it is so terminated, or his/her estate, shall be credited with such interest in the recovery as the Secretary or the court may determine to be equitably due to date of termination.

(f) Attorney's standing: Contracts must contain a stipulation by the attorney that he/she is a fully licensed member in good standing of the bar of the state(s) of ———, and to the best of his/her knowledge no disciplinary proceedings have been instituted against him/her by any bar association of any jurisdiction of the United States or its territories which are pending and/or unresolved and he/she has not been disbarred or suspended from the practice of law in any jurisdiction in the United States or its territories.

(g) Duration: Contracts must cite clearly their duration and may contain a provision for renewal. General legal counsel and special legal services contracts shall not extend beyond four years, whereas claims contracts may extend for, but not exceed, five years, with provision for extensions.

§ 72.6 Execution in quintuplicate.

A contract should be executed in quintuplicate, and all copies should be transmitted through the officer in charge to the Secretary for approval. The officer in charge shall include with the transmittal recommendations with respect to the approval of the contract.

§ 72.7 Resolution required.

The selection of counsel and of tribal representatives to conclude a contract on behalf of a tribe shall be set forth in a resolution or resolutions adopted by the tribal governing body and shall be attached to and made a part of the contract.

§ 72.8 Tentative form of contract.

A tentative form of contract may be obtained by writing any Agency Superintendent, Area Director or the Commissioner of Indian Affairs. Requests for forms should include a statement of the scope of the intended employment, that is, whether the contract is desired for investigation and prosecution of tribal claims against the United States, for the representation of specific tribal claims against parties other than the United States, or for the provision of either general or special legal counsel services.

Ralph R. Reeser,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 80-21337 Filed 7-16-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-153-78]

Voluntary Employee's Beneficiary Associations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to voluntary employees' beneficiary associations. It withdraws an earlier notice of proposed rulemaking that was published in the Federal Register on January 23, 1969. The regulations would provide guidance needed to determine whether an organization is a voluntary employees' beneficiary association under the Internal Revenue Code of 1954, as amended, and therefore exempt from federal income tax.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 15, 1980. The amendments are proposed to be effective generally for taxable years beginning after December 31, 1954, but later in the case of some associations.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-153-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Michael A. Thrasher of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3961, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 501(c)(9) of the Internal Revenue Code of 1954, as amended by section 121 of the Tax Reform Act of 1969 (83 Stat. 541), concerning voluntary employees' beneficiary associations. These amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Additional Information

Section 501(c)(9), in conjunction with section 501(a), exempts from federal income tax those associations that provide for the payment of life, sick, accident, or other benefits to their members and their members' dependents or designated beneficiaries, if no part of their net earnings inures to the benefit of any private shareholder or individual.

The proposed regulations clarify the basic requirements that an organization must meet in order to be a "voluntary employees' beneficiary association" within the meaning of section 501(c)(9). They are not intended to describe "employees' beneficiary association" as that term is used in section 3(4) of the Employee Retirement Income Security Act of 1974 (ERISA). Generally, the basic requirements in order to be a "voluntary employees' beneficiary association" are that:

(a) The organization is an association of employees;

(b) Membership in the organization is voluntary;

(c) The purpose of the organization is to provide for the payment of life, sick, accident, or other benefits; and

(d) None of the organization's funds inures to the benefit of any private shareholder or individual other than as contemplated by (c) above.

The principal function of the proposed regulations is to clarify who may join the association and the kinds of benefits the association may provide. These provisions are supplemented with examples of both what is permitted and what is prohibited.

While these regulations do not explicitly provide for coordination between arrangements that are subject to section 404 and the permissibility of benefits furnished by organizations exempt under section 501(c)(9), the proposed regulations generally do not allow a voluntary employees' beneficiary association to provide employer-funded benefits of the kind that are subject to section 404. It is anticipated that regulations to be promulgated under section 404 will clarify the distinction between arrangements that are subject to that section and those that are not, and consideration then will be given to coordinating the two sets of rules.

Comments and Requests for a Public Hearing

Before adopting the rules contained in these proposed regulations as a Treasury decision, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Mr. Russell E. Greenblatt of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed amendments to the regulations

The proposed regulations under section 501(c)(9) published in the Federal Register on January 23, 1969 (34 FR 1020) are withdrawn, and the following amendments to the Income Tax Regulations (26 CFR Part 1) are hereby proposed:

The following new sections are inserted in the appropriate place:

§ 1.501(c)(9)-1 Voluntary employees' beneficiary associations, in general.

To be described in section 501(c)(9) an organization must meet all of the following requirements:

(a) The organization is an employees' association;

(b) Membership in the association is voluntary;

(c) The organization provides for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits; and

(d) No part of the net earnings of the organization insures, other than by payment of the benefits referred to in paragraph (c) of this section, to the benefit of any private shareholder or individual.

§ 1.501(c)(9)-2 Membership in a voluntary employees' beneficiary association; employees; voluntary association of employees.

(a) *Membership*—(1) *In general.* The membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer (or affiliated employers), to common coverage under one or more collective bargaining agreements (with respect to benefits provided pursuant to such agreement(s)), to membership in a labor union, or to membership in one or more locals of a national or international labor union. For example, membership in an association might be open to all employees of a particular employer, or to employees in specified job classifications working for certain employers at specified locations and who are entitled to benefits pursuant to one or more collective bargaining agreements. In addition, employees of one or more employers engaged in the same line of business in the same geographic area will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits. Whether a group of individuals is defined by reference to a permissible standard or standards is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this paragraph. Exemption will not be denied merely because the membership of an association includes some individuals who are not employees (within the meaning of paragraph (b) of this section), provided that such individuals share an employment-related bond with the employee-members. Such individuals may include, for example, the trustees, administrators, and employees of the association, or the proprietor of a business whose employees are members of the association. For purposes of the preceding two sentences, an association will be considered to be composed of employees if 90 percent of the total membership of the association during the year consists of employees (within the meaning of paragraph (b) of this section).

(2) *Restrictions.* Eligibility for membership may be restricted by geographic proximity, or by objective conditions or limitations reasonably related to employment, such as a limitation to a reasonable classification of workers, a limitation based on a reasonable minimum period of service, a limitation based on maximum compensation, or a requirement that a member be employed on a full-time basis. Any objective criteria used to restrict eligibility for membership in an association may not, however, be selected or administered in a manner that limits membership to officers, shareholders or highly compensated employees of an employer contributing to or otherwise funding the employees' association. Eligibility for benefits (or membership) also may be restricted by objective conditions relating to the type or amount of benefits offered. However, any such objective conditions may not be selected or administered in a manner that discriminates in the provision of benefits in favor of officers, shareholders or highly compensated employees of an employer contributing to or otherwise funding the employees' association. Whether the selection or administration of objective conditions has the effect of discriminating in favor of officers, shareholders or highly compensated employees is to be determined on the basis of all the facts and circumstances. Thus, a requirement that a member meet a health standard reasonably related to eligibility for a particular benefit is permissible. Also permissible, in the case of an employer-funded organization, is a requirement that excludes, or has the effect of excluding, employees who are members of another organization funded by the employer, to the extent that such other organization offers similar benefits on comparable terms to the excluded employees. If restrictions or conditions on membership or eligiblity for benefits are determined through collective bargaining, by trustees designated pursuant to a collective bargaining agreement, or by the collective bargaining agents of the members of an association or trustees named by such agents, such restrictions, terms or conditions generally will be considered reasonably related to employment and generally will not be considered as limiting membership to, or discriminating in the provision of benefits in favor of, officers, shareholders or highly compensated employees.

(3) *Example.* The provisions of this section may be illustrated by the following example:

Example. Pursuant to a collective bargaining agreement entered into by X

Corporation and W, a labor union which represents all of X Corporation's hourly-paid employees, the X Corporation Union Benefit Plan is established to provide life insurance benefits to employees of X represented by W. The Plan is funded by contributions from X, and is jointly administered by X and W. In order to provide its non-unionized employees with comparable life insurance benefits, X also establishes and funds the X Corporation Life Insurance Trust. The Trust will not be ineligible for exemption as an organization described in section 501(c)(9) solely because membership is restricted to those employees of X who are not members of W.

(b) *Meaning of "employee".* Whether an individual is an "employee" is determined by reference to the legal and bona fide relationship of employer and employee. The term "employee" includes the following:

(1) An individual who is considered an employee:

(i) For employment tax purposes under Subtitle C of the Internal Revenue Code and the regulations thereunder, or

(ii) For purposes of a collective bargaining agreement.

whether or not the individual could qualify as an employee under applicable common law rules. This would include any person who is considered an employee for purposes of the Labor Management Relations Act, 1947, 61 Stat. 136, *as amended*, 29 U.S.C. 141 (1979).

(2) An individual who became entitled to membership in the association by reason of being an employee. Thus, an individual who would otherwise qualify under this paragraph will continue to qualify as an employee even though such individual is on leave of absence, works temporarily for another employer or as an independent contractor, or has been terminated by reason of retirement, disability or layoff. For example, an individual who in the normal course of employment is employed intermittently by more than one employer in an industry characterized by short-term employment by several different employers will not, by reason of temporary unemployment, cease to be an employee within the meaning of this paragraph.

(c) *Description of voluntary association of employees.*—(1) *Association.* To be described in section 501(c)(9) and this section there must be an entity having an existence independent of the member-employees or their employer.

(2) *Voluntary.* Generally, membership in an association is voluntary if an affirmative act is required on the part of an employee to become a member rather than the designation as a member due to employee status. However, an association shall be considered voluntary although membership is required of all employees, provided that the employees do not incur a detriment (for example, in the form of deductions from pay) as the result of membership in the association. An employer is not deemed to have imposed involuntary membership on the employee if membership is required as the result of a collective bargaining agreement or as an incident of membership in a labor organization.

(3) *Of employees.* To be described in this section, an organization must be controlled by its membership or by independent trustee(s), or by trustees or other fiduciaries at least some of whom are designated by, or on behalf of, the membership. Whether control by or on behalf of the membership exists is a question to be determined with regard to all of the facts and circumstances, but generally such control will be deemed to be present when the membership (either directly or through its representative) elects, appoints or otherwise designates a person or persons to serve as chief operating officer(s), administrator(s), or trustees(s) of the organization.

(4) *examples.* The provisions of this section may be illustrated by the following examples:

Example (1). X, a labor union, represents all the hourly-paid employees of Y Corporation. A health insurance benefit plan was established by X and Y as the result of a collective bargaining agreement entered into by them. The plan established the terms and conditions of membership in, and the benefits to be provided by, the plan. In accordance with the terms of the agreement, Y Corporation is obligated to establish a trust fund and make contributions thereto at specified rates. The trustees, some of whom are designated by X and some by Y, are authorized to hold and invest the assets of the trust and to make payments on instructions issued by Y Corporation in accordance with the conditions contained in the plan. The interdependent benefit plan agreement and trust indenture together create a voluntary employees' beneficiary association over which the employees possess the requisite control through the trustees designated by their representative, X.

Example (2). Z Corporation unilaterally established an educational benefit plan for its employees. The purpose of the plan is to provide payments for job-related educational or training courses, such as apprenticeship training programs, for Z Corporation employees, according to objective criteria set forth in the plan. Z establishes a separate bank account which it uses to fund payments to the plan. Contributions to the account are to be made at the discretion of and solely by Z Corporation, which also administers the plan and retains control over the assets in the fund. Z Corporation's educational benefit plan and the related account do not constitute an association and therefore are not a voluntary employees' beneficiary association.

Example (3). The facts are the same as in example (2) except that the payment by Z of its employees' educational and training expenses was agreed upon through collective bargaining between M labor union, a recognized bargaining agent on behalf on Z's employees, and Z. Z is obligated to pay benefits in accordance with the criteria set forth in the plan. To fulfill its obligation, Z established the "Z Corporation Employees' Benefit Fund" and opened a bank account in the name of the Fund. The Fund is funded solely by contributions from Z and income earned from the investment of those contributions. Z is the administrator of the Fund, retains full control over the investment and application of the Fund's assets, and determines the amount and timing of contributions to the Fund. Educational and training benefit payments are made from the Fund to employees of Z who submit payment requests and are determined by Z to qualify for such payments under the terms of the governing agreement. Although the benefit payment are required by a collective bargaining agreement entered into by representatives of Z's employees, and although the Fund makes payment directly to eligble beneficiaries, the Fund is not a voluntary employees' beneficiary association because neither the employees nor an independent trustee have any control over the Fund's assets or operation.

Example (4). W, an association of employers, is exempt from federal income tax as an organization described in section 501(c)(5). It engages trienially in collective bargaining with X labor union, a recognized bargaining agent on behalf of certain unionized employees. Pursuant to the most recent bargaining agreement, W became obligated to pay certain health-care expenses incurred by members of X who are employed by employer-members of W. To fulfill the employers' obligation, a Fund is established by W. W administers the fund, assessing and collecting contributions from its employer-members and reimbursing its members, on application by them, for health-care benefits paid by the members to their members' employees as stipulated in the collective bargaining agreement. The Fund established by W is not a voluntary employees' beneficiary association because it is not controlled by the X labor union or its members and therefore is not an association of "employees". Instead, it is an association of employers that was established and is controlled by them in order to fulfill their obligations under the collective bargaining agreement.

Example (5). A, an individual, is the incorporator and chief operating officer of Lawyers' Beneficiary Association (LBA). LBA is engaged in the business of providing medical benefits to members of the Association and their families. Membership is open only to practicing lawyers who are neither self-employed nor partners in a law firm. Membership in LBA is solicited by insurance agents under the control of X Corporation (owned by A) which, by contract with LBA, is the exclusive sales agent. Medical benefits are paid from a trust

account containing contributions paid by the members, together with proceeds from the investment of those contributions. Contribution and benefit levels are set by LBA. The "members" of LBA do not hold meetings, have no right to elect officers or directors of the Association, and no right to replace trustees. Collectively, the subscribers for medical benefits from LBA cannot be said to control the associations and membership is neither more than nor different from the purchase of an insurance policy from a stock insurance company. LBA is not a voluntary employees' beneficiary association.

§ 1.501(c)(9)-3 Voluntary employees' beneficiary associations; life, sick, accident, or other benefits.

(a) *In general.* The life, sick, accident, or other benefits provided by a voluntary employees' beneficiary association must be payable to its members, their dependents, or their designated beneficiaries. For purposes of section 501(c)(9), "dependent" means the member's spouse, any child of the member or the member's spouse, and any other individual who an association, relying on information furnished to it by a member, in good faith believes is a person described in section 152(a). Life, sick, accident, or other benefits may take the form of cash or noncash benefits. A voluntary employees' beneficiary association is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in this section if it systematically and knowingly provides benefits (of more than a *de minimis* amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

(b) *Life benefits.* The term "life benefit" means a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent. A "life benefit" may be provided directly or through insurance. It generally must consist of current protection, but also may include a right to convert to individual coverage on termination of eligibility for coverage through the association, or a permanent benefit as defined in, and subject to the conditions in, the regulations under section 79. A "life benefit" also includes the benefit provided under any life insurance contract purchased directly from an employee-funded association by a member. The term "life benefit" does not include a pension, annuity or similar benefit, except that a benefit payable by reason of the death of an insured may be settled in the form of an annuity for the beneficiary.

(c) *Sick and accident benefits.* The term "sick and accident benefits" means amounts furnished to or on behalf of a member or a member's dependents in the event of illness or personal injury to a member or dependent. Such benefits may be provided through reimbursement to a member or a member's dependents for amounts expended because of illness or personal injury, or through the payment of premiums to a medical benefit or health insurance program. Similarly, a sick and accident benefit includes an amount paid to a member in lieu of income during a period in which the member is unable to work due to sickness or injury. Sick benefits also include benefits designed to safeguard or improve the health of members and their dependents. Sick and accident benefits may be provided directly by an association to or on behalf of members and their dependents, or may be provided indirectly by an association through the payment of premiums or fees to an insurance company, medical clinic, or other program under which members and their dependents are entitled to medical services or to other sick and accident benefits. Sick and accident benefits may also be furnished in noncash form, such as, for example, benefits in the nature of clinical care services by visiting nurses, and transportation furnished for medical care.

(d) *Other benefits.* The term "other benefits" includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if—

(1) It is intended to safeguard or improve the health of a member or a member's dependents, or

(2) It protects against a contingency that interrupts or impairs a member's earning power.

(e) *Examples of "other benefits".* Payroll vacation benefits, providing vacation facilities, reimbursing vacation expenses, and subsidizing recreational activities such as athletic leagues are considered "other benefits." The provision of child-care facilities for preschool and school-age dependents are also considered "other benefits." The provision of job readjustment allowances, temporary living expense loans and grants at times of disaster (such as fire or flood), supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D)(i) of the Code), severance benefits (under a severance pay plan within the meaning of [illegible]) and education or training benefits or courses (such as apprenticeship training programs) for members, are considered "other benefits" because they protect against a loss of income or earning power. Personal legal service benefits are considered "other benefits" provided they consist solely of payments or credits to one or more organizations or trusts described in section 501(c)(20). Except to the extent otherwise provided in these regulations, as amended from time to time, "other benefits" also include any benefit provided in the manner permitted by paragraphs (5) *et seq.* of section 302(c) of the Labor Management Relations Act of 1947, 61 Stat. 136, *as amended*, 29 U.S.C. 186(c) (1979).

(f) *Examples of nonqualifying benefits.* Benefits that are not described in paragraphs (d) or (e) of this section are not "other benefits". Thus, "other benefits" do not include the payment of commuting expenses, such as bridge tolls or train fares, the provision of accident or homeowner's insurance benefits for damage to property, the provision of malpractice insurance, or the provision of loans to members except in times of distress (as permitted by § 1.501(c)(9)-3(e)). "Other benefits" also do not include the provision of savings facilities for members. The term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement, or a benefit that is similar to the benefit provided under a stock bonus or profit-sharing plan. For the purposes of section 501(c)(9) and these regulations a benefit will be considered similar to that provided under a profit-sharing plan if it provides for deferred compensation that becomes payable by reason of the passage of time, rather than as the result of an unanticipated event. Thus, for example, supplemental unemployment benefits, which generally become payable by reason of unanticipated layoff, are not, for purposes of these regulations, considered similar to the benefit provided under a profit-sharing plan.

(g) *Examples.* The provisions of this section may be further illustrated by the following examples:

Example (1). V was organized in connection with a vacation plan created pursuant to a collective bargaining agreement between M, a labor union, which represents certain hourly paid employees of T corporation, and T. The agreement calls for the payment by T to V of a specified sum per hour worked by T employees who are covered by the collective bargaining agreement. While such amounts are paid directly by T to V, they are included in the covered employees' wages and are subject to withholding for income and FICA taxes. The amounts are paid by T to V to provide vacation benefits provided under the collective bargaining agreement. Generally,

each covered employee receives a check in payment of his or her vacation benefit during the year following the year in which contributions were made by T to V. The amount of the vacation benefit is determined by reference to the contributions during the prior year to V by T on behalf of each employee, and is distributed in cash to each such employee. If the earnings on investments by V during the year preceding distribution are sufficient after deducting the expenses of administering the plan, each recipient of a vacation benefit is paid an amount, in addition to the contributions on his or her behalf, equal to his/her ratable share of the net earnings of V during such year. The plan provides a vacation benefit that constitutes an eligible "other benefit" described in section 501(c)(9) and § 1.501(c)(9)-3(e).

Example (2). The facts are the same as in Example (1), except that each covered employee of T is entitled, at his or her discretion, to contribute up to an additional $1,000 each year to V, which agrees in respect of such sum to pay interest at a stated rate from the time of contribution until the time at which the contributing employee's vacation benefit is distributed. In addition, each employee may elect to leave all or a portion of his/or distributable benefit on deposit past the time of distribution, in which case interest will continue to accrue. Because the plan more closely resembles a savings arrangement than a vacation plan, the benefit payable to the covered employees of T is not a "vacation benefit" and is not an eligible "other benefit" described in section 501(c)(9) and § 1.501(c)(9)-3(d) or (e).

§ 1.501(c)(9)-4 Voluntary employees beneficiary associations, inurement.

(a) *General rule.* No part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits permitted by § 1.501(c)(9)-3. The disposition of property to, or the performance of services for, a person for less than the greater of fair market value, or cost (including indirect costs) to the association, other than as a life, sick, accident or other permissible benefit, constitutes prohibited inurement. Generally, the payment of unreasonable compensation to the trustees or employees of the association, or the purchase of insurance or services for amounts in excess of their fair market value from a company in which one or more of the association's trustees, officers or fiduciaries has an interest, will constitute prohibited inurement. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances, taking into account the guidelines set forth in this section. The guidelines and examples contained in this section are not an exhaustive list of the activities that may constitute prohibited inurement, or the persons to whom the association's earnings could impermissibly inure. See § 1.501(a)-1(c).

(b) *Disproportionate benefits.* For purposes of subsection (a), the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of § 1.501(c)(9)-3 even though the benefit otherwise is one of the type permitted by that section. For example, the payment to highly compensated personnel of benefits that are disproportionate in relation to benefits received by other members of the association will constitute prohibited inurement. Also, the payment to similarly situated employees of benefits that differ in kind or amount will constitute prohibited inurement unless the difference can be justified on the basis of objective and reasonable standards adopted by the association or on the basis of standards adopted pursuant to the terms of a collective bargaining agreement.

(c) *Rebates.* The rebate of excess insurance premiums to the payor of such premiums, based on the mortality or morbidity experience of the insurer, does not constitute prohibited inurement. A voluntary employees' beneficiary association may also make administrative adjustments strictly incidental to the provision of benefits to its members.

(d) *Dissolution of the association.* A distribution to members upon the dissolution of the association will not constitute prohibited inurement if the amounts distributed to members are determined pursuant to the terms of a collective bargaining agreement or on the basis of objective and reasonable standards which do not result in either disproportionate payments to similarly situated members or discrimination in favor of officers, shareholders or highly compensated employees of an employer contributing or otherwise funding the employees' association. However, if the association's corporate charter, articles of association, trust instrument, or other written instrument by which the association was created, as amended from time to time, provides that on dissolution its assets will be distributed to its members' contributing employers, or if in the absence of such provision the law of the State in which the association was created provides for such distribution to the contributing employers, the association is not described in section 501(c)(9).

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. employees A and B, members of the X voluntary employees' beneficiary association, are unemployed. Both A and B receive unemployment benefits from X, but those to A include an amount in addition to those provided to B, to provide for A's retraining. B has been found pursuant to objective and reasonable standards not to qualify for, or has declined, X's retraining program. X's additional payment to A for retraining does not constitute prohibited inurement.

§ 1.501(c)(9)-5 Voluntary employees' beneficiary associations; recordkeeping requirements.

(a) *Records.* In addition to such other records which may be required (for example, by section 512(a)(3) and the regulations thereunder), every organization described in section 501(c)(9) must maintain records indicating the amount contributed by each member and contributing employer, and the amount and type of benefits paid by the organization to or on behalf of each member.

(b) *Cross reference.* For provisions relating to annual information returns with respect to payments, see section 6041 and the regulations thereunder.

§ 1.501(c)(9)-6 Voluntary employees' beneficiary associations; benefits includible in gross income.

(a) *In general.* Cash and noncash benefits realized by a person on account of the activities of an organization described in section 501(c)(9) shall be included in gross income to the extent provided in the Internal Revenue Code of 1954, including, but not limited to, sections 61, 72, 101, 104 and 105 of the Code and regulations thereunder.

(b) *Availability of statutory exclusions from gross income.* The availability of any statutory exclusion from gross income with respect to contributions to, or the payment of benefits from, an organization described in section 501(c)(9) is determined by the statutory provision conferring the exclusion, and the regulations and rulings thereunder, not by whether an individual is eligible for membership in the organization. Thus, for example, if a benefit is paid by an employer-funded organization described in section 501(c)(9) to a member who is not an "employee," a statutory exclusion from gross income that is available only for "employees" would be unavailable in the case of a benefit paid to such individual.

§ 1.501(c)(9)-7 Voluntary employees' beneficiary associations; section 3(4) of ERISA.

The term "voluntary employees' beneficiary association" in section 501(c)(9) of the Internal Revenue Code is not necessarily coextensive with the term "employees' beneficiary

association's application for recognition under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(4), and the requirements which an organization must meet to be an "employees' beneficiary association" within the meaning of section 3(4) of ERISA are not necessarily identical to the requirements that an organization must meet in order to be a "voluntary employees' beneficiary association" within the meaning of section 501(c)(9) of the Code.

§ 1.501(c)(9)–8 Voluntary employees' beneficiary associations; effective date.

(a) *General rule.* Except as otherwise provided in this section, the provisions of §§ 1.501(c)(9)–1 through 7 shall apply with respect to taxable years beginning after December 31, 1954.

(b) *Pre-1970 taxable years.* For taxable years beginning before January 1, 1970, section 501(c)(9)(B) (relating to the requirement that 85 percent or more of the association's income consist of amounts collected from members and contributed by employers), as in effect for such years, shall apply.

(c) *Existing associations.* Except as otherwise provided in subsection (d), the provisions of §§ 1.501(c)(9)–2(a)(1) and –2(c)(3), to the extent they impose more stringent requirements than regulations proposed on January 23, 1969 (34 FR 1020), shall apply only with respect to taxable years beginning after December 31, 1980.

(d) *Collectively-bargained plans.* In the case of a voluntary employees' beneficiary association which receives contributions from one or more employers pursuant to one or more collective bargaining agreements in effect on December 31, 1980, the provisions of §§ 1.501(c)(9)–1 through 5 shall apply with respect to taxable years beginning after the date on which the agreement terminates (determined without regard to any extension thereof agreed to after December 31, 1980).

(e) *Election.* Notwithstanding paragraphs (c) or (d) of this section, an organization may choose to be subject to all or a portion of one or more of the provisions of these regulations for any taxable year beginning after December 31, 1954.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80-21271 Filed 7-14-80; 11:34 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 78-163]

Exception From PFD Carriage Requirement for Sailboards

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to except operators of certain sailboards from the requirement to carry personal flotation devices. This action is prompted by the safety record and popular acceptance of an exemption from the requirement granted to one manufacturer of a sailboard.

DATES: Comments must be received on or before October 15, 1980.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/24), U.S. Coast Guard Headquarters, Washington, D.C. 20593. Between the hours of 7:30 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to and will be available for examination at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LCDR Harry F. Schmecht, Office of Boating Safety, (G–BLC–3/42), Room 4308, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. Telephone (202) 426–4176.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written data, views, or arguments. Written comments should include the docket number (CGD 78–163), and the name and address of the person submitting the comments. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in this matter. The transcript of the proceedings of the meetings of the National Boating Safety Advisory Council at which the review of the exemption was discussed is available for examination in Room 4224, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. The minutes of the meeting are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G–BA/42), U.S. Coast Guard, Washington, D.C. 20593.

This proposal has been prepared and reviewed, and is not considered significant, under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A draft evaluation has been prepared and is included in the public docket. A copy of the draft evaluation may be obtained from the Commandant (G–CMC/24), CGD 78–163, U.S. Coast Guard, Washington, D.C. 20593.

Drafting Information

The principal persons involved in drafting this notice are: LTJG John Coleman, Project Manager, Office of Boating Safety, and Ms. Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

Background

On March 29, 1979, the Coast Guard published an Advance Notice of Proposed Rulemaking (44 FR 18705) expressing its intent to review the individual exemption granted to Windsurfing International, Inc. on February 18, 1973, and to possibly expand the exemption to include all sailboard manufacturers. Windsurfer sailboards manufactured by Windsurfing International, Inc. were exempted from the requirement in 33 CFR 175.15 that a personal flotation device (PFD) of any type be carried for each person on board a recreational boat.

The ANPRM solicited public participation and views on several questions, particularly the following:

(a) The safety aspects of the exemption: whether there was any evidence or data to show that failure of operators to carry a PFD on Windsurfers results in injuries or fatalities or other significant safety problems?

(b) Enforcement problems: what, if any, problems have state boating law enforcement officials encountered because of the exemption and what problems might be anticipated if the exemption is continued or expanded?

Discussion of Comments Received on ANPRM

Fifty-one comments were received. Of these, thirty-five generally approved of the existing exemption and fourteen did not. Of those commenters who approved of the existing exemption, twenty-seven were individuals or representatives of groups who identified themselves as sailboard or windsurfer users. No sailboard or Windsurfer user was opposed to the exemption.

the interest of a tribe so requires, he/she may suspend a contract and the payment of all compensation due or accruing to the attorneys at that time pending a hearing to be held without unreasonable delay. If a contract providing for payment of fees at an hourly rate or on an annual retainer basis is terminated, the attorney shall receive compensation such as the Secretary may determine equitably due to date of termination. If a contract providing for payment of fees contingent upon recovery is terminated for just cause, death of the attorney, or any other reason, the attorney to whom it is so terminated, or his/her estate, shall be credited with such interest in the recovery as the Secretary or the court may determine to be equitably due to date of termination.

(f) Attorney's standing: Contracts must contain a stipulation by the attorney that he/she is a fully licensed member in good standing of the bar of the state(s) of ———, and to the best of his/her knowledge no disciplinary proceedings have been instituted against him/her by any bar association of any jurisdiction of the United States or its territories which are pending and/or unresolved and he/she has not been disbarred or suspended from the practice of law in any jurisdiction in the United States or its territories.

(g) Duration: Contracts must cite clearly their duration and may contain a provision for renewal. General legal counsel and special legal services contracts shall not extend beyond four years, whereas claims contracts may extend for, but not exceed, five years, with provision for extensions.

§ 72.6 Execution in quintuplicate.

A contract should be executed in quintuplicate, and all copies should be transmitted through the officer in charge to the Secretary for approval. The officer in charge shall include with the transmittal recommendations with respect to the approval of the contract.

§ 72.7 Resolution required.

The selection of counsel and of tribal representatives to conclude a contract on behalf of a tribe shall be set forth in a resolution or resolutions adopted by the tribal governing body and shall be attached to and made a part of the contract.

§ 72.8 Tentative form of contract.

A tentative form of contract may be obtained by writing any Agency Superintendent, Area Director or the Commissioner of Indian Affairs. Requests for forms should include a statement of the scope of the intended employment; that is, whether the contract is desired for investigation and prosecution of tribal claims against the United States, for the representation of specific tribal claims against parties other than the United States, or for the provision of either general or special legal counsel services.

Ralph R. Reeser,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 80-21337 Filed 7-16-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-153-78]

Voluntary Employee's Beneficiary Associations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to voluntary employees' beneficiary associations. It withdraws an earlier notice of proposed rulemaking that was published in the Federal Register on January 23, 1969. The regulations would provide guidance needed to determine whether an organization is a voluntary employees' beneficiary association under the Internal Revenue Code of 1954, as amended, and therefore exempt from federal income tax.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 15, 1980. The amendments are proposed to be effective generally for taxable years beginning after December 31, 1954, but later in the case of some associations.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-153-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Michael A. Thrasher of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3981, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 501(c)(9) of the Internal Revenue Code of 1954, as amended by section 121 of the Tax Reform Act of 1969 (83 Stat. 541), concerning voluntary employees' beneficiary associations. These amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Additional Information

Section 501(c)(9), in conjunction with section 501(a), exempts from federal income tax those associations that provide for the payment of life, sick, accident, or other benefits to their members and their members' dependents or designated beneficiaries, if no part of their net earnings inures to the benefit of any private shareholder or individual.

The proposed regulations clarify the basic requirements that an organization must meet in order to be a "voluntary employees' beneficiary association" within the meaning of section 501(c)(9). They are not intended to describe "employees' beneficiary association" as that term is used in section 3(4) of the Employee Retirement Income Security Act of 1974 (ERISA). Generally, the basic requirements in order to be a "voluntary employees' beneficiary association" are that:

(a) The organization is an association of employees;

(b) Membership in the organization is voluntary;

(c) The purpose of the organization is to provide for the payment of life, sick, accident, or other benefits; and

(d) None of the organization's funds inures to the benefit of any private shareholder or individual other than as contemplated by (c) above.

The principal function of the proposed regulations is to clarify who may join the association and the kinds of benefits the association may provide. These provisions are supplemented with examples of both what is permitted and what is prohibited.

While these regulations do not explicitly provide for coordination between arrangements that are subject to section 404 and the permissibility of benefits furnished by organizations exempt under section 501(c)(9), the proposed regulations generally do not allow a voluntary employees' beneficiary association to provide employer-funded benefits of the kind that are subject to section 404. It is anticipated that regulations to be promulgated under section 404 will clarify the distinction between arrangements that are subject to that section and those that are not, and consideration then will be given to coordinating the two sets of rules.

Corporation and W, a labor union which represents all of X Corporation's hourly-paid employees, the X Corporation Union Benefit Plan is established to provide life insurance benefits to employees of X represented by W. The Plan is funded by contributions from X, and is jointly administered by X and W. In order to provide its non-unionized employees with comparable life insurance benefits, X also establishes and funds the X Corporation Life Insurance Trust. The Trust will not be ineligible for exemption as an organization described in section 501(c)(9) solely because membership is restricted to those employees of X who are not members of W.

(b) *Meaning of "employee".* Whether an individual is an "employee" is determined by reference to the legal and bona fide relationship of employer and employee. The term "employee" includes the following:

(1) An individual who is considered an employee:

(i) For employment tax purposes under Subtitle C of the Internal Revenue Code and the regulations thereunder, or

(ii) For purposes of a collective bargaining agreement.

whether or not the individual could qualify as an employee under applicable common law rules. This would include any person who is considered an employee for purposes of the Labor Management Relations Act, 1947, 61 Stat. 136, *as amended*, 29 U.S.C. 141 (1979).

(2) An individual who became entitled to membership in the association by reason of being an employee. Thus, an individual who would otherwise qualify under this paragraph will continue to qualify as an employee even though such individual is on leave of absence, works temporarily for another employer or as an independent contractor, or has been terminated by reason of retirement, disability or layoff. For example, an individual who in the normal course of employment is employed intermittently by more than one employer in an industry characterized by short-term employment by several different employers will not, by reason of temporary unemployment, cease to be an employee within the meaning of this paragraph.

(c) *Description of voluntary association of employees.*—(1) *Association.* To be described in section 501(c)(9) and this section there must be an entity having an existence independent of the member-employees or their employer.

(2) *Voluntary.* Generally, membership in an association is voluntary if an affirmative act is required on the part of an employee to become a member rather than the designation as a member due to employee status. However, an association shall be considered voluntary although membership is required of all employees, provided that the employees do not incur a detriment (for example, in the form of deductions from pay) as the result of membership in the association. An employer is not deemed to have imposed involuntary membership on the employee if membership is required as the result of a collective bargaining agreement or as an incident of membership in a labor organization.

(3) *Of employees.* To be described in this section, an organization must be controlled by its membership or by independent trustee(s), or by trustees or other fiduciaries at least some of whom are designated by, or on behalf of, the membership. Whether control by or on behalf of the membership exists is a question to be determined with regard to all of the facts and circumstances, but generally such control will be deemed to be present when the membership (either directly or through its representative) elects, appoints or otherwise designates a person or persons to serve as chief operating officer(s), administrator(s), or trustees(s) of the organization.

(4) *examples.* The provisions of this section may be illustrated by the following examples:

Example (1). X, a labor union, represents all the hourly-paid employees of Y Corporation. A health insurance benefit plan was established by X and Y as the result of a collective bargaining agreement entered into by them. The plan established the terms and conditions of membership in, and the benefits to be provided by, the plan. In accordance with the terms of the agreement, Y Corporation is obligated to establish a trust fund and make contributions thereto at specified rates. The trustees, some of whom are designated by X and some by Y, are authorized to hold and invest the assets of the trust and to make payments on instructions issued by Y Corporation in accordance with the conditions contained in the plan. The interdependent benefit plan agreement and trust indenture together create a voluntary employees' beneficiary association over which the employees possess the requisite control through the trustees designated by their representative, X.

Example (2). Z Corporation unilaterally established an educational benefit plan for its employees. The purpose of the plan is to provide payments for job-related educational or training courses, such as apprenticeship training programs, for Z Corporation employees, according to objective criteria set forth in the plan. Z establishes a separate bank account which it uses to fund payments to the plan. Contributions to the account are to be made at the discretion of and solely by Z Corporation, which also administers the plan and retains control over the assets in the fund. Z Corporation's educational benefit plan and the related account do not constitute an association and therefore are not a voluntary employees' beneficiary association.

Example (3). The facts are the same as in example (2) except that the payment by Z of its employees' educational and training expenses was agreed upon through collective bargaining between M labor union, a recognized bargaining agent on behalf on Z's employees, and Z. Z is obligated to pay benefits in accordance with the criteria set forth in the plan. To fulfill its obligation, Z established the "Z Corporation Employees' Benefit Fund" and opened a bank account in the name of the Fund. The Fund is funded solely by contributions from Z and income earned from the investment of those contributions. Z is the administrator of the Fund, retains full control over the investment and application of the Fund's assets, and determines the amount and timing of contributions to the Fund. Educational and training benefit payments are made from the Fund to employees of Z who submit payment requests and are determined by Z to qualify for such payments under the terms of the governing agreement. Although the benefit payment are required by a collective bargaining agreement entered into by representatives of Z's employees, and although the Fund makes payment directly to eligble beneficiaries, the Fund is not a voluntary employees' beneficiary association because neither the employees nor an independent trustee have any control over the Fund's assets or operation.

Example (4). W, an association of employers, is exempt from federal income tax as an organization described in section 501(c)(6). It engages trienially in collective bargaining with X labor union, a recognized bargaining agent on behalf of certain unionized employees. Pursuant to the most recent bargaining agreement, W became obligated to pay certain health-care expenses incurred by members of X who are employed by employer-members of W. To fulfill the employers' obligation, a Fund is established by W. W administers the fund, assessing and collecting contributions from its employer-members and reimbursing its members, on application by them, for health-care benefits paid by the members to their members' employees as stipulated in the collective bargaining agreement. The Fund established by W is not a voluntary employees' beneficiary association because it is not controlled by the X labor union or its members and therefore is not an association of "employees". Instead, it is an association of employers that was established and is controlled by them in order to fulfill their obligations under the collective bargaining agreement.

Example (5). A, an individual, is the incorporator and chief operating officer of Lawyers' Beneficiary Association (LBA). LBA is engaged in the business of providing medical benefits to members of the Association and their families. Membership is open only to practicing lawyers who are neither self-employed nor partners in a law firm. Membership in LBA is solicited by insurance agents under the control of X Corporation (owned by A) which, by contract with LBA, is the exclusive sales agent. Medical benefits are paid from a trust

each covered employee receives a check in payment of his or her vacation benefit during the year following the year in which contributions were made by T to V. The amount of the vacation benefit is determined by reference to the contributions during the prior year to V by T on behalf of each employee, and is distributed in cash to each such employee. If the earnings on investments by V during the year preceding distribution are sufficient after deducting the expenses of administering the plan, each recipient of a vacation benefit is paid an amount, in addition to the contributions on his or her behalf, equal to his/her ratable share of the net earnings of V during such year. The plan provides a vacation benefit that constitutes an eligible "other benefit" described in section 501(c)(9) and § 1.501(c)(9)–3(e).

Example (2). The facts are the same as in Example (1), except that each covered employee of T is entitled, at his or her discretion, to contribute up to an additional $1,000 each year to V, which agrees in respect of such sum to pay interest at a stated rate from the time of contribution until the time at which the contributing employee's vacation benefit is distributed. In addition, each employee may elect to leave all or a portion of his/or distributable benefit on deposit past the time of distribution, in which case interest will continue to accrue. Because the plan more closely resembles a savings arrangement than a vacation plan, the benefit payable to the covered employees of T is not a "vacation benefit" and is not an eligible "other benefit" described in section 501(c)(9) and § 1.501(c)(9)–3(d) or (e).

§ 1.501(c)(9)–4 Voluntary employees beneficiary associations, inurement.

(a) *General rule.* No part of the net earnings of an employee' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits permitted by § 1.501(c)(9)–3. The disposition of property to, or the performance of services for, a person for less than the greater of fair market value, or cost (including indirect costs) to the association, other than as a life, sick, accident or other permissible benefit, constitutes prohibited inurement. Generally, the payment of unreasonable compensation to the trustees or employees of the association, or the purchase of insurance or services for amounts in excess of their fair market value from a company in which one or more of the association's trustees, officers or fiduciaries has an interest, will constitute prohibited inurement. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances, taking into account the guidelines set forth in this section. The guidelines and examples contained in this section are not an exhaustive list of the activities that may constitute prohibited inurement, or the persons to whom the association's earnings could impermissibly inure. See § 1.501(a)–1(c).

(b) *Disproportionate benefits.* For purposes of subsection (a), the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of § 1.501(c)(9)–3 even though the benefit otherwise is one of the type permitted by that section. For example, the payment to highly compensated personnel of benefits that are disproportionate in relation to benefits received by other members of the association will constitute prohibited inurement. Also, the payment to similarly situated employees of benefits that differ in kind or amount will constitute prohibited inurement unless the difference can be justified on the basis of objective and reasonable standards adopted by the association or on the basis of standards adopted pursuant to the terms of a collective bargaining agreement.

(c) *Rebates.* The rebate of excess insurance premiums to the payor of such premiums, based on the mortality or morbidity experience of the insurer, does not constitute prohibited inurement. A voluntary employees' beneficiary association may also make administrative adjustments strictly incidental to the provision of benefits to its members.

(d) *Dissolution of the association.* A distribution to members upon the dissolution of the association will not constitute prohibited inurement if the amounts distributed to members are determined pursuant to the terms of a collective bargaining agreement or on the basis of objective and reasonable standards which do not result in either disproportionate payments to similarly situated members or discrimination in favor of officers, shareholders or highly compensated employees of an employer contributing or otherwise funding the employees' association. However, if the association's corporate charter, articles of association, trust instrument, or other written instrument by which the association was created, as amended from time to time, provides that on dissolution its assets will be distributed to its members' contributing employers, or if in the absence of such provision the law of the State in which the association was created provides for such distribution to the contributing employers, the association is not described in section 501(c)(9).

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. employees A and B, members of the X voluntary employees' beneficiary association, are unemployed. Both A and B receive unemployment benefits from X, but those to A include an amount in addition to those provided to B, to provide for A's retraining. B has been found pursuant to objective and reasonable standards not to qualify for, or has declined, X's retraining program. X's additional payment to A for retraining does not constitute prohibited inurement.

§ 1.501(c)(9)–5 Voluntary employees' beneficiary associations; recordkeeping requirements.

(a) *Records.* In addition to such other records which may be required (for example, by section 512(a)(3) and the regulations thereunder), every organization described in section 501(c)(9) must maintain records indicating the amount contributed by each member and contributing employer, and the amount and type of benefits paid by the organization to or on behalf of each member.

(b) *Cross reference.* For provisions relating to annual information returns with respect to payments, see section 6041 and the regulations thereunder.

§ 1.501(c)(9)–6 Voluntary employees' beneficiary associations; benefits includible in gross income.

(a) *In general.* Cash and noncash benefits realized by a person on account of the activities of an organization described in section 501(c)(9) shall be included in gross income to the extent provided in the Internal Revenue Code of 1954, including, but not limited to, sections 61, 72, 101, 104 and 105 of the Code and regulations thereunder.

(b) *Availability of statutory exclusions from gross income.* The availability of any statutory exclusion from gross income with respect to contributions to, or the payment of benefits from, an organization described in section 501(c)(9) is determined by the statutory provision conferring the exclusion, and the regulations and rulings thereunder, not by whether an individual is eligible for membership in the organization. Thus, for example, if a benefit is paid by an employer-funded organization described in section 501(c)(9) to a member who is not an "employee," a statutory exclusion from gross income that is available only for "employees" would be unavailable in the case of a benefit paid to such individual.

§ 1.501(c)(9)–7 Voluntary employees' beneficiary associations; section 3(4) of ERISA.

The term "voluntary employees' beneficiary association" in section 501(c)(9) of the Internal Revenue Code is not necessarily coextensive with the term "employees' beneficiary